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Treasurer-Tax Collector
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE SOUTHERN DISTRICT OF NEW YORK

10 In re:

11 LEHMAN BROTHERS HOLDINGS
12 INC., et al.,

13 Debtors.
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Case No. 08-13555 (JMP)

**OBJECTION OF CREDITOR
VENTURA COUNTY
TREASURER-TAX COLLECTOR TO
DEBTORS' FORTIETH OMNIBUS
OBJECTION TO CLAIMS (LATE-
FILED CLAIMS)**

Chapter 11

(Jointly Administered)

Hearing Date: 10/27/10
Time: 10:00 a.m. (E.D.T.)
Response Due: 10/18/10
Time: 4:00 p.m. (E.D.T.)

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20 **I**

21 **INTRODUCTION**

22 1. Debtors Lehman Brothers Holdings Inc., et al. ("Lehman"), have filed a
23 Fortieth Omnibus Objection to Claims (Late-Filed Claims) ("Objection") requesting,
24 among other things, an order disallowing in full the claim of Creditor Ventura County
25 Treasurer-Tax Collector ("Ventura County") for delinquent business property taxes. The
26 basis for the Objection is that the claim was filed after September 22, 2009, the bar date
27 for claims filed in this matter. Ventura County opposes the Objection on the grounds that

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1 it did not receive timely notice of the bar date, and therefore the late filing of its claim
2 should be excused.

3 II

4 THE OBJECTION SHOULD BE DENIED BECAUSE VENTURA COUNTY DID 5 NOT RECEIVE TIMELY NOTICE OF THE BAR DATE

6 2. The Federal Rules of Bankruptcy Procedure require that a creditor be given
7 “notice by mail” of, among other things, the “time fixed for filing proof of claims.”
8 (Fed. Rules Bankr. Proc., rule 2002(a)(7).) The bankruptcy courts, including those
9 in the Southern District of New York, have ruled that notice of the claim bar date
10 is an essential element of due process. (E.g., *In re Waterman Steamship Corp.*
11 (Bankr. S.D.N.Y. 1993) 157 B.R. 220, 221 (“*Waterman Steamship*”).) Absent
12 adequate notice, a creditor is not bound by the plan of reorganization, and its claim is not
13 dischargeable. (*Ibid.*; see also *In re Turning Point Lounge, Ltd.* (Bankr. W.D.N.Y. 1990)
14 111 B.R. 44, 47.) Creditors with “reasonably ascertainable names and addresses”
15 are entitled to actual, as opposed to published, notice. (*Waterman Steamship*, 157 B.R.
16 at p. 221.)

17 3. Ventura County never received actual notice of the September 22, 2009, bar
18 date. As explained in the declaration of Mary Barnes, attached hereto as Exhibit A
19 (hereafter, “Barnes Decl.”), the Ventura County Treasurer-Tax Collector’s Office did not
20 receive a copy of the Notice of Deadlines For Filing Proofs of Claim (“Notice”) that was
21 apparently mailed to some creditors in July 2009. (Barnes Decl., ¶ 5.) The Treasurer-Tax
22 Collector’s staff does not routinely monitor the newspapers in which the Notice was
23 published and therefore did not become aware of the bar date from the publication.
24 (Barnes Decl., ¶ 6.)

25 4. Ventura County did not become aware of the bar date until November 2009,
26 when Ms. Barnes accessed the Notice on the website of the court-appointed claims agent.
27 (Barnes Decl., ¶ 7.) Upon further investigation, Ms. Barnes discovered that Ventura
28 County was not included on the mailing list of creditors who were sent copies of the

1 Notice. (Barnes Decl., ¶ 7.) Ms. Barnes promptly filed a Proof of Claim with the court
2 on November 5, 2009. (Barnes Decl., ¶ 8.) The Proof of Claim included a copy of the
3 mailing list of creditors, as well as a cover letter explaining that the Proof of Claim was
4 filed after the bar date because Ventura County did not receive notice of the bar date.

5 5. Ventura County is a local government agency in California. Lehman, with
6 minimal diligence, could easily have obtained an address and contact information for
7 the Treasurer-Tax Collector's Office. Under the circumstances, Ventura County was
8 entitled to actual notice of the bar date pursuant to Federal Rules of Bankruptcy
9 Procedure, rule 2002.

10 III

11 RESERVATION OF RIGHTS

12 6. Ventura County reserves its rights to amend, modify or supplement this
13 opposition.

14 IV

15 CONCLUSION

16 7. The Court should deny the Objection for the reasons stated above.

17 V

18 ADDITIONAL INFORMATION

19 8. Address to which Lehman must send any reply to this opposition:

20 John E. Polich
21 Assistant County Counsel
22 Office of the County Counsel
23 800 South Victoria Avenue, L/C #1830
24 Ventura, California 93009
25 Telephone No.: (805) 654-2592
26 Facsimile No.: (805) 654-2185

27 9. Person possessing ultimate authority to reconcile, settle or otherwise resolve
28 the claim on behalf of Ventura County:

Chief Deputy Tax Collector
800 South Victoria Avenue, L/C #1290
Ventura, California 93009

Telephone: Please contact through the attorney above at (805) 654-2592.

1 10. Claim 65230 (Business Personal Property Tax): Lehman Brothers Holdings
2 Inc., Parcel Number 000-03-480-45/003, located in Camarillo, California, assessed at
3 \$33,900. Lehman seeks to reduce the tax claim to zero. (Barnes Decl., ¶ 3.)

4 LEROY SMITH
5 County Counsel, County of Ventura

6 Dated: 10/15/10

By John Polich
7 JOHN E. POLICH
8 Assistant County Counsel

9 Attorneys for Treasurer-Tax Collector
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